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WP 8107/03
CA 727/93

608/732/05

IN THE STATE ADMINISTRATIVE TRIBUNAL AT JABALPUR.

O.A.No. 727 of 1993.

APPLICANT

:- Chhabil Das Uthra son of Shri Vasundhara Uthra, aged about 56 years, Sub Engineer, Public Works Department (B & R) Division No.1, Bilaspur.

- Versus -

RESPONDENTS

- :- 1- State of Madhya Pradesh through : Secretary, Department of Public Works (B & R), Vallabh Bhavan, Bhopal.
- 2- Engineer-in-Chief, Public Works Department (B & R), Satpura Bhavan, Bhopal.

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1984.

(7)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

W. P. (S) No. 732 of 2005

Petitioner

Chhabil Das Uthra

Versus

Respondents

State of M.P. (Now Chhattisgarh) and
another.

Shri K.A. Ansari, Sr. Advocate with Shri S.I. Ali, Advocate for the
petitioner.

Shri V.V.S. Murthy, Dy. A.G. with Shri Arvind Dubey, Panel Lawyer
for the State.

ORDER
(8th January, 2007)

This writ petition is directed against the order dated 10.03.1993 passed by respondent No.1, whereby it has been directed that the period prior to proceeding on leave i.e. 16.11.1994 not exceeding to the total period of five years could be treated as leave period and period in excess of five years shall be treated to be break-in service.

(2) The facts of the case, in brief, are that the petitioner was appointed as an Overseer vide order dated 13.11.1958. On account of some domestic problems, he proceeded on leave w.e.f 16.11.1964 and thereafter he submitted his resignation on 20.02.1965. No order was passed on his resignation and the resignation letter remained in abeyance. Thereafter the petitioner moved an application on 17.01.1969 for withdrawal of his resignation letter dated 20.02.1965. In response to the letter dated 17.01.1969, the Chief Engineer, Public Works Department permitted the petitioner to join his duties vide order dated 12.05.1970. Accordingly the petitioner joined his duties on 12.05.1970.

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(3) The petitioner, thereafter, submitted an application to the Supdt. Engineer requesting for extraordinary leave and regularising the period of absence from duty. The said application was forwarded to the Government through the Chief Engineer. By order dated 08.05.1975 issued under the signature of the Under Secretary, addressed to the Chief Engineer, the application was rejected. The ground mentioned in the order was that since the period of absence of the petitioner from 15.11.1964 to 11.05.1970 was more than five years, it was not possible to regularise the period by granting extraordinary leave. Thereafter, the petitioner sent a notice dated 23.11.1986 under Section 80 of the C.P.C. to the State Government through the Engineer-In-Chief, P.W.D. to regularise the period of absence and fix his proper seniority in the matter of promotion. However, this was of no avail. Thus, the petitioner filed Misc. Petition No.1113 of 1986. The said petition was transferred to the State Administrative Tribunal where it has been registered as T.A. No. 1769 of 1988. The Tribunal, after having heard both the parties and perused the documents, disposed of the said application vide order dated 30.10.1991 (A-3) directing the respondents to pass a final order, as per rules, deciding how the period of absence of the petitioner would be treated, within a period of three months from the date of that order.

(4) No order was passed by the respondents within the time stipulated by the Tribunal. The petitioner filed an application for initiating contempt proceedings against the responsible officers of the respondents which was registered as M.A. No.383 of 1992. After filing of the said application, respondent No.1 passed the order dated 10.03.1993 and the Tribunal disposed of the M.A No.383 of 1992 on 11.03.1993 stating that the directions issued by the Tribunal in T.A. No.1769 of 1988 have been

complied with. The petitioner has filed this petition against the order dated 10.03.1993 (A-4), passed by respondent No.1.

(5) Shri K.A. Ansari, learned Sr. Counsel assisted by Shri S.I. Ali, learned counsel appearing for the petitioner submits that the State Government has passed the identical order as was passed on 08-05-1975, pursuant to the order dated 30-10-1991, passed by the Tribunal. The respondents-Authorities have not applied their mind to the provisions of Rule 18 of the Fundamental Rules which was notified by Notification dated 09-03-1977. The said Rule provides for treatment of wilful absence from duty not regularised to the effect that wilful absence from duty, even though not covered by grant of leave does not entail loss of lien. The period of absence not covered by grant of leave, shall have to be treated as dies-non for all purpose, namely, increment and leave.

(6) Shri V.V.S. Murthy, learned Dy. A.G. assisted by Shri Arvind Dubey, learned Panel Lawyer appearing for the State, *per contra*, would submit that the petitioner was covered by the Revised Leave Rules, 1934 and the maximum period of leave provided under Rule 6 of Revised Leave Rules, 1934 is five years and no leave can be granted if the period of absence exceeds five years.

(7) I have heard learned counsel for the parties and perused the pleadings and records appended thereto.

(8) It is apparent that the State has not addressed on the applicability of the Rule 18 of the Fundamental Rules made by the Secretary of the State in Council under Section 96-B of the Government of India Act, which has attained the status of the statute. Fundamental Rule 18 reads as under:

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"F.R. 18- Effect of continuous absence- Unless the Government in view of the exceptional circumstances of the case otherwise determines, no Government servant shall be granted leave of any kind for a continuous period exceeding five years.

[Substituted vide Notification No.714/R. 516, IV.R. 1-71, dated 2nd June, 1972 and have effective from 9-6-72]

M.P. Govt. decision.- Treatment of wilful absence from duty not regularised: wilful absence from duty even though not covered by grant of leave does not entail loss of lien. The period of absence not covered by grant of leave, shall have to be treated as dies-non for all purpose, namely, increment and leave."

(F.D. Notification No.245/2038/76/R-I/IV, dated 9-3-77)

(9) The Notification in Fundamental Rules dated 09.03.1977, as stated above, clearly provides for treating the wilful absence during the period not covered by grant of leave as dies-non for all purpose, namely, increment and leave.

(10) In the present case, the petitioner remained absent from 16.11.1964 to 12.05.1970, when the petitioner was permitted to join the office. In other words, it can be held that the absence of the petitioner was condoned by permitting the petitioner to join the office in which the petitioner was having lien before proceeding on leave on 16.11.1964 wilfully.

(11) It is further clear that while rejecting the application of the petitioner vide order dated 10.03.1993 (A-4), the respondents-Authorities have perhaps applied Rule 6 of the Revised Leave Rules, 1934, not Rule 18 of the Fundamental Rules which provides for treating the period of wilful absence as dies-non in the event the maximum period of leave exceeds five years.

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(12) In view of the foregoing reasons, this petition is allowed and the respondents - Authorities are directed to consider the case of the petitioner in accordance with the provisions of Rule 18 of the Fundamental Rules for treating the period of absence wilfully beyond the period of five years as dies-non. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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